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FEDERAL COMMUNICATIONS COMMISSION  
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August 8, 1997

BY HAND DELIVERY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: MM Docket No. 97-138

Dear Mr. Caton:

Transmitted herewith on behalf of Galen O. Gilbert are an original and four copies of his Comments with regard to the Commission's Notice of Proposed Rulemaking, FCC 97-182, released May 28, 1997, in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with the undersigned.

Very truly yours,  
FLETCHER, HEALD & HILDRETH, P.L.C.

*Anne Goodwin Crump*

Anne Goodwin Crump  
Counsel for Galen O. Gilbert

Enclosures

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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Review of the Commission's Rules ) MM Docket 97-138  
Regarding the Main Studio and Local )  
Public Inspection Files of Broadcast )  
Television and Radio Stations )

Directed to: The Commission

**COMMENTS**

Galen O. Gilbert ("Gilbert"), by his attorneys, hereby respectfully submits his Comments with regard to the Commission's Notice of Proposed Rule Making, FCC 97-182, released May 28, 1997, proposing changes in the broadcast main studio and local public inspection file rules. With respect thereto, the following is stated:

1. Gilbert is a principal in the licensees of KSWM(AM), Aurora, Missouri; KWHW(AM)/KRKZ(FM), Altus, Oklahoma; and KTJS(AM)/KQTZ(FM), Hobart, Oklahoma, and in applicants for construction permits for new FM stations at Shell Knob, Missouri, and Farmersville, Texas. Gilbert previously has been the principal of the licensees of additional stations in Missouri, Oklahoma, and Texas. Accordingly, Gilbert has substantial experience in operating radio stations, primarily in small markets. Based upon this experience, Gilbert supports the relaxation of both the local public inspection file rule (47 C.F.R. §§ 73.3526, 73.3527) and the main studio rule ( 47 C.F.R. § 73.1125).
2. With regard to the local public inspection file, based upon his own experience, Gilbert

strongly supports the proposed revision of the public inspection file rules to permit licensees to maintain their local public inspection files at their main studios, wherever located. In Gilbert's many years of experience, he has found that the Commission's rule requiring each licensee to maintain a public inspection file within the station's community of license, regardless of where the station's main studio may be located, does not serve the purpose of making information more readily accessible to the public and, indeed, often works contrary to that goal. The location of a station's public file outside its main studio is not generally known to community residents. Moreover, when the file is maintained off the licensee's premises, it is subject to either deliberate tampering or inadvertent loss of documents. In addition, a public file location within a community of license is not required to be conveniently located, and, in the interest of controlling costs, less convenient locations within a community may often be chosen. Thus, while maintenance of a separate public file is expensive for the licensee, that expense is not justified by increased benefit to the public.

3. As an initial matter, the public generally associates a station with its main studio location. It is only logical to assume that all records associated with the station's business would be located at the main studio, the station's central business location. All that a member of the public must do in order to ascertain the main studio location is look it up in the local telephone directory. Thus, it would be natural for someone to proceed directly to the main studio in order to view the public file. On the other hand, if the public inspection file is away from the main studio, a member of the public has no way to consult a directory to determine the location of the file. Unless the interested party wishes to see the public file at a time when the station happens to be running a public notice including the file location, and unless that party happens to hear or see the notice, the only way to find the location would be to visit or call the station. Therefore,

members of the public who wish to inspect the local public file would logically contact or visit the main studio, only to find out that they must go somewhere else to view the file. Thus, a separate public file location imposes additional burdens not only on the licensee but also on members of the public seeking information.

4. Even more importantly, having a public file located away from the licensee's main studio premises removes the file from the licensee's direct control. Even the most diligent licensee cannot be assured that its public inspection file will be complete at all times. Innumerable possibilities exist for documents to go astray. Absent daily visits to the file, the licensee cannot be certain that the file is always complete due to potential losses of documents in transmission, mishandling by the file custodian, or outright tampering or theft. If the public file is located at the main studio, the licensee can always maintain control over the file and can monitor it more closely to ensure that the file remains complete.

5. Gilbert also supports the proposal to eliminate the requirement that licensees maintain a copy of the 1974 manual entitled "The Public and Broadcasting." As noted by the Commission in the Notice of Proposed Rule Making, this manual is long out of date. Indeed, the manual is so outdated that in some instances it provides misinformation. Therefore, it would be in the public interest to remove this document from station's public inspection files.

6. In addition, Gilbert supports the proposal to reduce the retention requirements for license assignment and transfer applications and applications for major modifications. While the public might have an interest in these applications during the time in which they are pending before the Commission or the courts, such applications would be of little relevance after action on the applications became final. Thus, licensees should be required to retain those applications only until action on the application becomes final.

7. With regard to the main studio location, Gilbert favors a relaxation of the Commission's Rules to allow placement of the main studio within 50 miles of the center of the community of license. This figure would provide for greater flexibility in the choice of main studio locations while at the same time maintaining accessibility to the community of license. A figure of 50 miles would be less than the possible distance from the community now allowable for some Class C1 and Class C stations which might have their transmitters located at a distance from the community of license, with the main studio still further away from the community in the same direction. In theory, under the current rule, if a Class C station's transmitter were so located that its city grade contour barely encompassed the community of license, and if it located its main studio at the edge of the contour on the other side of the transmitter, the main studio could be located some eighty miles from the community of license.

8. The additional flexibility in main studio location would be beneficial to licensees, especially those operating lower powered, Class A stations. A revision of the rules to allow location of the main studio within 50 miles of the community of license would allow Class A stations the same choices as those afforded to Class C stations. Thus, stations in the same market would be able to compete on a more equal footing. The improvement in competitive position would allow for more economically sound stations better able to serve the public interest. Moreover, with today's modern transportation and good roads, a distance of 50 miles may be covered with relative ease. Thus, the studio will remain accessible to the community of license.

9. Whatever standard is chosen for determining the main studio location, it should be possible to determine compliance objectively. A fixed mileage standard would accomplish this goal. Any rule which would require subjective analysis of the acceptability of a particular studio location, such as one specifying that a location be "reasonably accessible" would create

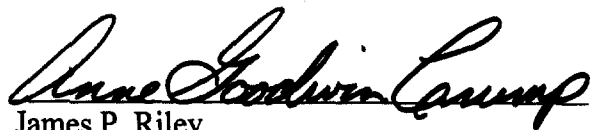
uncertainty for licensees. Licensees using their best efforts to comply with the rule could never be certain whether their chosen location would later be found to be unacceptable pursuant to the main studio rules. Licensees then could find themselves in the untenable position of being committed to a long term lease but being forced to find a new main studio location. Furthermore, any subjective standard would generate litigation, as other parties could file complaints arguing that a particular location violated the rule based upon their own subjective analyses. Such a result would be an unnecessary burden on the resources of both the Commission and licensees. Therefore, any revised main studio rule should embody an objective standard for determining where the main studio may be placed.

10. In sum, Gilbert favors revision of the public inspection file rules to allow licensees to maintain their public inspection files at their main studios, wherever located. This modification would retain or enhance the benefits to the public of readily accessible information concerning the station's performance while eliminating burdens on licensees. Gilbert also favors revision of the main studio rule to provide more flexibility in the choice of main studio locations.

Respectfully submitted,

GALEN O. GILBERT

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